

SERVED: May 13, 1999

NTSB Order No. EA-4766

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 12th day of May, 1999

_____)	
JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-15013
v.)	
)	
TRAVIS WERTH,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

The respondent has appealed from the initial decision Administrative Law Judge William E. Fowler, Jr., rendered in this proceeding on March 19, 1998, at the conclusion of an evidentiary hearing.¹ By that decision, the law judge affirmed an order of the Administrator suspending "any and all airman pilot certificates held [by respondent], including Commercial Pilot Certificate No. 367901243," for his alleged failure, in violation

¹An excerpt from the hearing transcript containing the initial decision is attached.

of section 135.73 of the Federal Aviation Regulations ("FAR," 14 CFR Part 135),² to allow a representative of the Administrator to perform a ramp inspection of the aircraft he was preparing to operate for Cirrus Air, also known as Professional Flight Crew Services. For the reasons discussed below, the appeal will be denied.

This case arose from an FAA inspector's attempt to conduct a ramp inspection on N185BA, a Lear Model 35, at VC Bird International Airport, Antigua. Respondent, the co-pilot, was standing outside the aircraft's door waiting for his four passengers when the inspector approached him, showed his credentials, and announced his intention to ramp check the aircraft. Instead of allowing the inspector unrestricted access, however, respondent advised that under his company manual, he could not let the inspector in, only the captain could. Despite several requests, respondent persisted in his refusal to permit the inspector, in the absence of the captain, to enter and inspect the aircraft.³

²FAR section 135.73 provides as follows:

§ 135.73 Inspections and tests.

Each certificate holder and each person employed by the certificate holder shall allow the Administrator, at any time or place, to make inspections or tests (including en route inspections) to determine the holder's compliance with the Federal Aviation Act of 1958, applicable regulations, and the certificate holder's operating certificate, and operations specifications.

³The captain also denied the inspector access to the aircraft when he arrived some 10 to 15 minutes later after completing some business with Customs. He claimed, without

Like the law judge, we entertain no doubt that respondent's insistence that the inspector wait for the captain before entering the aircraft to fulfill his inspection duties constituted a refusal to allow an inspection that FAR section 135.73 obligated him to permit. Moreover, we agree with the law judge that respondent's state of mind is not relevant. In this regard we note that not only did the respondent's company manual not in any way purport to limit his authority to grant access to an aircraft for a ramp inspection, it set forth in full the FAR which is the basis for this certificate action.⁴ Thus, it is difficult to escape the conclusion that respondent either knowingly misrepresented his company's written policy or was unjustifiably ignorant of it, given his obligation to be familiar with the federal regulations it mirrors. Neither possibility would serve to excuse the respondent from the unequivocal regulatory requirement that he allow an inspection "at any time or place."

In view of the foregoing, we disagree with the suggestion of counsel for respondent that the sanction should be reduced or converted to a civil penalty because respondent believed he was complying with the law. Nevertheless, assuming, arguendo, that

(..continued)
foundation, subsequent inquiry revealed, that his company's operations specifications only allowed the aircraft to be inspected in Fort Lauderdale, Florida.

⁴The company manual also includes the full text of FAR section 135.75, which, according to the testimony by the inspector in this matter, sets forth a pilot-in-command's obligation to allow an en route inspection when so requested by an FAA inspector presenting proper credentials.

respondent misapprehended the nature of his responsibility, we would not agree that this would be an appropriate case in which to reduce sanction. This is not a case in which an airman was simply misinformed as to a regulatory requirement. This case involves an airman who, without convincing justification, chose to disregard the advice of a representative of the Administrator as to the scope of his authority to conduct an inspection before an aircraft was operated in commercial service. Reducing respondent's sanction, in these circumstances, would effectively minimize his defiance of a request he now concedes, and should have then known, was a lawful one. We decline the invitation to take an action which could be construed as endorsing unjustified or insubstantial challenges to an FAA inspector's authority that impede or preclude the timely performance of vital and necessary safety functions.

ACCORDINGLY, IT IS ORDERED THAT:

1. The respondent's appeal is denied;
2. The initial decision and the order of the Administrator are affirmed; and
3. The 30-day suspension of respondent's airman certificate shall begin 30 days after the service date indicated on this opinion and order.⁵

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion

⁵For purposes of this opinion and order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration, pursuant to FAR § 61.19(f).

and order.